

ARDIS WARCLOUD,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-35-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 20, 1994

This is an appeal from a November 10, 1993, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for a direct loan. For the reasons discussed below, the Board affirms the Area Director's decision.

Appellant is an enrolled member of the Cheyenne River Sioux Tribe (Tribe). On April 5, 1993, she submitted an application for a direct loan in the amount of \$100,000 for the purpose of establishing a countertop snack vending machine business in western South Dakota. Appellant stated that she intended to purchase 400 "coin-operated 50¢ SNAK-STIX countertop machines," and that "[t]he planned areas of location include a geographic region west of the Missouri but including Mobridge and Pierre north of I-90 and west into the Black Hills including as many cities as necessary for 400 locations."

Appellant's application was submitted through the Tribe's Credit Officer and reached the Aberdeen Area Office in May 1993. On May 14, 1993, the Area Office returned the application for further information. On September 16, 1993, the Tribal Credit Officer forwarded the resubmitted application to the Area Office. Although he made no explicit recommendation for approval or disapproval of the application, the Tribal Credit Officer noted that there were problems with appellant's personal credit report.

On November 10, 1993, the Area Director denied appellant's application, stating:

We are not convinced that this business is feasible. The collateral offered for security is insufficient. We have also determined that your credit rating is substandard.

We suggest starting the business on a smaller scale utilizing your personal resources. If the business proves profitable and your Credit Bureau Report substantially improves, we will reconsider your proposal at a later date.

Appellant appealed the denial to the Board. Her notice of appeal states:

I dispute the conclusions of the Aberdeen Area Office as follows:

1) Feasibility - the vending business is everywhere one looks in America. Not feasible? The company I intended to buy machines from has a representative with machines on location right in Aberdeen as well as five other East River cities. The company has been reserving the entire West River of South Dakota for me pending a decision that has taken since 5 Apr 93 to reach.

2) Collateral - the machines themselves should be worth \$80,000 and with my other assets valued at about \$60,000 the collateral should be more than adequate.

3) Credit rating - my credit is excellent, having never defaulted on any credit. Your credit bureau check may have confused my credit with my husband's. Because of involuntary unemployment he is behind on two credit card payments involving cards which included additional cards for me, but no debt was incurred by me. My excellent credit standing in 1992 resulted in the refinancing (Aug) of a house in Cleveland of \$51,000, a mortgage (Feb) of \$13,000 on my house in Dupree and the five year installment loan (Oct) to buy a 1993 Dodge minivan.

I do not believe my application was given fair or timely consideration.

(Appellant's Dec. 8, 1993, Notice of Appeal). Although advised of her right to file a brief, appellant did not do so.

Initially, the Board addresses appellant's suggestion that BIA's consideration of her application was untimely. The Board cannot agree that this was the case. BIA's initial and final reviews of appellant's application were conducted within a reasonable time after BIA received the original and resubmitted applications.

The Area Director's decision does not explain why he questioned the feasibility of appellant's proposal. Nor does it shed any light on the reasons for his conclusion that appellant's collateral was insufficient. Under other circumstances, the Board would vacate this decision because of the Area Director's failure to give reasons for the conclusions stated. See, e.g., Abbott Bank v. Aberdeen Area Director, 23 IBIA 243 (1993). In this case, however, the Board finds that the Area Director's third reason for denial of appellant's application, i.e., her credit rating, is sufficient to support his decision. The basis for the Area Director's conclusion was a credit report for appellant, which is included in the administrative record. 1/ Appellant appears to be contending that the credit report is in error because the problem debts shown on it were incurred by her husband. If that is her contention, the Board can only note that it was her responsibility to have any error in her report corrected at the credit bureau. BIA was entitled to rely on the credit report furnished to it.

1/ A separate credit report for appellant's husband is also included in the record.

25 U.S.C. § 1463 (1988) provides: “Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment.” See also 25 CFR 101.3(a). Under the circumstances here, BIA was entitled to consider appellant's credit report in forming a judgment as to whether there was a reasonable prospect of repayment. Because BIA's decision to grant or deny a loan is based on the exercise of discretion, the Board does not substitute its judgment for BIA's. E.g., Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153, 157 (1992), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's November 10, 1993, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge